IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.Rev.Pet.No. 4015 of 2007()

CRA.747/2005 of SESSIONS COURT, KOLLAM
CC.688/2004 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR

.....

REVN. PETITIONERs:

---

1. NAZAR, S/O.HASSAN SAHIB, MALANCHARYVIL,
   KIZHAKKETHIL VEEDU, KARIYARA MURI, VILAKUDY VILLAGE

2. ALIYAR RAWTHER, S/O. NAGORKHANI RAWTHER,
   KANJIRAMVILA VEEDU, KARIYA MURI, VILAKUDY VILLAGE

3. ASHRAF, S/O. AMEER KANNU, NELLIVILA PADIYATTATHIL VEEDU,
   KARIYARA MURI, VILAKUDY VILLAGE

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO. 230 OF 2004 OF PNALUR POLICE STATION)

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12-11-2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * *

Crl. R.P. No. 4015 of 2007

* * * * * * * * * * * * * * * * * * *

Dated: 12-11-2007

ORDER

Revision petitioners who are accused Nos. 1 to 3 in Crime No. 130 of 2004 of Punalur Police Station for offences punishable under Sections 143, 147, 341, 323, 325 and 332 read with Sec. 149 I.P.C. challenge the conviction entered and the sentence passed concurrently by the courts below for offences punishable under Sections 341, 323 and 332 I.P.C.

2. The case of the prosecution an be summarised as follows:

The six accused persons in prosecution of their common object to voluntarily cause hurt to P.Ws 1 and 2 who were respectively the driver and conductor of a K.S.R.T.C. bus and thereby to deter their public duty, formed found themselves into an unlawful assembly in the evening of 31-5-2004. At about 3.30 p.m., on that day, they intercepted the K.S.R.T.C. bus driven by P.W.1. When the bus reached Thavalam junction on the Punalur-Pathanapuram main road they blocked the bus with their jeeps. A1 and A2 entered the bus through the driver's door. A1 fisted P.W.1, the driver on his nose causing injuries. A2 fisted P.W.1 on the face causing injuries on his lips and loosening of teeth. Thereafter the accused persons assaulted P.Ws 1 and 2 resulting in both sustaining injuries and causing discontinuance of the official duty of P.Ws 1 and 2 .

3. The prosecution examined 8 witnesses as P.Ws 1 to 8 and got marked 10 documents as Exts.P1 to P10. The uniform of P.W.1 was marked as M.O.1.

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They examined one witness as D.W.1.

5. The learned Magistrate, after trial, as per judgment dated 28-11-2005 acquitted accused Nos. 4 to 6 but convicted accused Nos. 1 to 3 (revision petitioners) of the offences punishable under Sections 341, 323 and 332 I.P.C. For the conviction under Sec. 341 I.P.C. each of them was sentenced to undergo simple imprisonment for one month. For the conviction under Sec. 323 I.P.C. each of them was sentenced to undergo simple imprisonment for three months and to pay fine of Rs. 500/- and on default to pay the fine to suffer simple imprisonment for two months. For the conviction under Sec. 332 I.P.C. each of the revision petitioners was sentenced to undergo simple imprisonment for six months. The substantive sentence of imprisonment was directed to run concurrently. Even though the revision petitioners preferred an appeal before the Sessions court, Kollam as Crl. Appeal No. 747 of 2005, as per judgment dated 18-8-2007 the said appeal was dismissed confirming the conviction entered and sentence passed against the revision petitioners. Hence, this revision.

6. Eventhough the learned counsel appearing for the revision petitioners assailed the conviction on various grounds, this Court sitting in revision will be loathe to interfere with the conviction recorded concurrently by the courts below after a careful evaluation of the oral and documentary evidence in the case. I, therefore, confirm the conviction entered against the revision petitioners.

7. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioners. It is true that the driver and conductor of a K.S.R.T.C. bus were assaulted by the assailants including the revision petitioners after chasing the bus. The very fact that the trial court acquitted accused Nos. 4 to 6 will show that the incident was not as alleged by the prosecution. The revision petitioners also have a case that it was on account of the K.S.R.T.C. bus hitting on the jeep of the revision petitioners that they were constrained to chase the bus and assault P.Ws 1 and 2. Considering the entire facts and circumstances, I do not think that the revision petitioners deserve penal servitude by way of incarceration. I am of the view that an appropriate fine and compensation shall meet the ends of justice. Accordingly, the sentence imposed on the revision petitioners is set aside. For their conviction under Sec. 341 I.P.C. each of the revision petitioners are sentenced to pay fine of Rs. 500/- and on default to pay the fine to suffer simple imprisonment for 15 days. For their conviction under Sec. 323 I.P.C. each of the revision petitioners shall pay fine of Rs. 1,000/- and on default to pay the fine, to suffer simple imprisonment for one month. For their conviction under Sec. 332 I.P.C. each of the revision petitioners shall pay a fine of Rs. 3000/- and on default to pay the fine to suffer simple imprisonment for three months. From out of the fine amount, a sum of Rs. 5,000/- shall be paid to P.W.1 and a sum of Rs. 2500/- shall be paid to P.W.2 as compensation under Sec. 357 (1) Cr.P.C. The fine amount shall be deposited before the trial court within a period of 45 days.

8. Accused Nos. 1 and 2 shall be released from prison forthwith unless their continued detention is found necessary in

connection with any other case against them. Their release shall, however, be subject to their liability to pay the fine amount and on default to pay the fine amount the defaulting accused shall undergo simple imprisonment for one month.

This revision is disposed of confirming the conviction entered but modifying the sentence as above.

V. Ramkumar, Judge.

ani